

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

| | | |
|------------------------|---|----------------------------------|
| WARREN EASTERLING, | : | Case No. 3:13-cv-024 |
| | : | |
| Plaintiff, | : | Judge Timothy S. Black |
| vs. | : | Magistrate Judge Michael R. Merz |
| | : | |
| OHIO ATTORNEY GENERAL, | : | |
| | : | |
| Defendant. | : | |

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 57)**

This case is before the Court pursuant to the Order of General Reference to United States Magistrate Judge Michael R. Merz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on October 22, 2018, submitted a Report and Recommendation. (Doc. 57). Plaintiff Warren Easterling filed objections to the Report and Recommendation on October 29, 2018. (Doc. 61).

After reviewing the Report and Recommendation, Plaintiff's objections, and the record in this case, the Court finds that Plaintiff's objections are not well-taken.

Plaintiff first objects to the Report and Recommendations' finding that the motion for relief of judgment is untimely. (Doc. 61 at 2–3). This argument lacks merit. The Report and Recommendation correctly found that, pursuant to Fed. R. Civ. P. 60(c), any motion for relief of judgment under Fed. R. Civ. P. 60(b)(3) must be made within a year of judgment. Here, Plaintiff's motion was filed more than five years after judgment. On that basis alone, Plaintiff's motion for relief of judgment fails as a matter of law.

Plaintiff additionally objects to the Report and Recommendation because he maintains that Ohio's vexatious litigator statute, Ohio Rev. Code § 2323.52, is unconstitutional. Plaintiff argues that because that statute is unconstitutional, there is no valid judgment against him. This argument fails because, as the Magistrate Judge notes, Ohio's vexatious litigator statute has been upheld as constitutional. *Hall v. Callahan*, 727 F.3d 450 (6th Cir. 2013). Therefore, there was a valid judgment against Plaintiff as of September 4, 2013.

Finally, Plaintiff objects to the Report and Recommendation's finding that his motion for recusal should be denied because Plaintiff seemingly claims that Magistrate Judge Merz is biased. (Doc. 61 at 4–6). There is no merit to this objection. In his motion to recuse, Plaintiff alleges that the undersigned District Judge conspired with District Judge Walter H. Rice to deprive Easterling of access to the courts by preventing him from entering the Federal Building which houses the United States District Court for the Southern District of Ohio in Dayton. Plaintiff's only evidence of the alleged conspiracy is that Judge Rice caused the undersigned Judge to receive copies of the Entry Barring Easterling.

First, the Court agrees with the Report and Recommendation's finding that "the notion that receipt of a copy of a court order proves one conspired with its author is utter nonsense." Second, the Report and Recommendation also correctly finds that Plaintiff's motion lacks any merit because 28 U.S.C. § 144 requires a party to file an affidavit of personal bias and Plaintiff's motion does not attach any such affidavit. (Doc. 57 at 4).

The Court therefore agrees with the Magistrate Judge's finding that Plaintiff's motion for recusal should be denied.

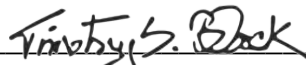
As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that Plaintiff's objections (Doc. 61) should be and are hereby **OVERRULED** and the Report and Recommendations (Doc. 57) should be and is hereby **ADOPTED** in its entirety.

Accordingly, for the foregoing reasons:

- 1) Plaintiff's motion for relief of judgment (Doc. 53) is **DENIED**
- 2) Plaintiff's motion for recusal (Doc. 54) is **DENIED**.

IT IS SO ORDERED.

Date: 1/24/19



Timothy S. Black
United States District Judge